

86<sup>th</sup> Legislative Session – 2011

Committee: Senate Commerce and Energy

Thursday, February 03, 2011

P - Present  
E - Excused  
A - Absent

Roll Call

P Adelstein  
P Buhl  
P Johnston  
P Lederman  
P Rave  
P Nygaard, Vice-Chair  
P Nelson (Tom), Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by chair, Senator Tom Nelson.

MOTION: SUSPEND RULE 7-1.4

Moved by: Nygaard  
Second by: Rave  
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Adelstein, Johnston, Lederman, Rave, Nygaard, Nelson (Tom)

Excused: Buhl

MOTION: TO APPROVE THE MINUTES OF TUESDAY, FEBRUARY 1, 2011

Moved by: Nygaard  
Second by: Rave  
Action: Prevailed by voice vote.

SB 119: revise certain provisions relating to sureties for water user district treasurers.

Presented by: Senator Eldon Nygaard  
Proponents: Margo Northrup, SD Association of Rural Water Systems  
Dennis Duncan, SD B-Y Water District

MOTION: DO PASS SB 119

Moved by: Adelstein  
Second by: Rave  
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Adelstein, Johnston, Lederman, Rave, Nygaard, Nelson (Tom)

Excused: Buhl

MOTION: PLACE SB 119 ON CONSENT CALENDAR

Moved by: Adelstein  
Second by: Rave  
Action: Prevailed by voice vote.

SB 121: authorize an alcoholic beverage retail license for certain malt beverage and wine dealers.

Presented by: Senator Eldon Nygaard (Handouts: #1)

MOTION: AMEND SB 121

121fa

On page 1, after line 8 of the printed bill, insert:

"

Section 2. That § 35-2-25 be amended to read as follows:

35-2-25. No license granted pursuant to subdivisions 35-4-2(3), (4), (6), (12), (13), (16), (17), and (17A) and section 1 of this Act and §§ 35-12-2 and 35-13-2 may be issued unless the applicant has first obtained a sales tax license pursuant to chapter 10-45, or, if applicable, a use tax license pursuant to chapter 10-46.

Section 3. That § 35-4-2.11 be amended to read as follows:

35-4-2.11. Fifty percent of all license and transfer fees received under the provisions of

subdivisions 35-4-2(16), (17), and (17A) and section 1 of this Act shall remain in the municipality in which the licensee paying the fee is located, or if outside the corporate limits of a municipality, then in the county in which the licensee is located. In addition, fifty percent of wholesaler license fees received under subdivision 35-4-2(15) shall revert to the municipality in which the licensee is located, or if outside the corporate limits of a municipality, then to the county in which the licensee is located. The remainder of all license and transfer fees and penalties received shall be credited to the state general fund.

Section 4. That § 35-4-79 be amended to read as follows:

35-4-79. No on-sale licensee may permit any person less than twenty-one years old to loiter on the licensed premises or to sell, serve, dispense, or consume alcoholic beverages on such premises. However, an on-sale licensee licensed pursuant to subdivision 35-4-2(4), (6), (11), (12), (13), or (16) or section 1 of this Act may permit persons eighteen years old or older to sell and serve or dispense alcoholic beverages if less than fifty percent of the gross business transacted by that establishment is from the sale of alcoholic beverages and the licensee or an employee that is at least twenty-one years of age is on the premises when the alcoholic beverage is sold or dispensed. For the purposes of this section, the term, to sell and serve alcoholic beverages, means to take orders for alcoholic beverages and to deliver alcoholic beverages to customers as a normal adjunct of waiting tables. The term does not include tending bar or drawing or mixing alcoholic beverages.

A violation of this section is a Class 2 misdemeanor.

Section 5. That § 35-4-81.2 be amended to read as follows:

35-4-81.2. No licensee licensed under subdivisions 35-4-2(12), (16), (17), (17A), and (19) and section 1 of this Act may sell, serve, or allow to be consumed on the premises covered by the license, any alcoholic beverages between the hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor."

Moved by: Adelstein  
Second by: Lederman  
Action: Prevailed by voice vote.

MOTION: DO PASS SB 121 AS AMENDED

Moved by: Adelstein  
Second by: Lederman  
Action: Prevailed by roll call vote. (5-0-2-0)

Voting Yes: Adelstein, Johnston, Lederman, Nygaard, Nelson (Tom)

Excused: Buhl, Rave

HB 1030: revise the provisions relating to placement of surplus lines insurance and tax allocation of surplus lines insurance.

Presented by: Merle Scheiber, Division of Insurance

Wendell Malsom, Division of Insurance, answered some questions

MOTION: DO PASS HB 1030

Moved by: Nygaard

Second by: Adelstein

Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Adelstein, Buhl, Johnston, Lederman, Nygaard, Nelson (Tom)

Excused: Rave

MOTION: PLACE HB 1030 ON CONSENT CALENDAR

Moved by: Adelstein

Second by: Nygaard

Action: Prevailed by voice vote.

SB 125: revise the time period for computing unemployment insurance employer contribution rates.

Presented by: Senator Mike Vehle

Proponents: Pam Roberts, Secretary, Department of Labor

Don Kattke, Division of Insurance

Shawn Lyons, SD Retailers Association

Larry Mann, SD CPA Society

MOTION: AMEND SB 125

125oa

On page 3, after line 8 of the printed bill, insert:

" Section 3. That § 61-5-24.1 be amended to read as follows:

61-5-24.1. Employers required by this title to pay contributions, except employers that pursuant to chapter 61-5A reimburse the unemployment compensation trust fund for benefits paid in lieu of contributions, shall also pay an employer's investment in South Dakota's future fee, hereinafter "investment fee," on wages as defined by this title. The fee rate for employers not eligible for experience rating, as defined in § 61-5-20.2, shall be seventy hundredths percent through calendar year 2006 and fifty-five hundredths percent on and after January 1, 2007. If an employer is eligible for experience rating, ~~his~~ the employer's reserve ratio shall be determined pursuant to ~~§ 61-5-18.14~~ § 61-5-18.17 and ~~his~~ the employer's investment fee rate shall be the rate appearing in column "A" on the same line on which ~~his~~ the employer's reserve ratio appears in column "B" of the following rate schedules.

From January 1, 1993, to December 31, 2006, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.70%	Less than 0.80%
0.60%	0.80% and Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2007, to December 31, 2007, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.60%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%

0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2008, to December 31, 2008, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.58%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

From January 1, 2009, to December 31, 2009, inclusive:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.56%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

Beginning January 1, 2010:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.55%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

The terms and conditions of this title which apply to the payment and collection of contributions also apply to the payment and collection of the investment fee. Proceeds from the investment fee shall be deposited in the clearing account of the unemployment compensation fund for clearance only and may not become part of the fund. After clearance, the money derived from such payments, less refunds made pursuant to the provisions of this title, shall be deposited in the employer's investment in South Dakota's future special revenue fund as provided for in § 61-5-24.2. Investment fee payments may not be credited to the employer's experience rating account and may not be deducted in whole or in part by any employer from the wages of individuals in its employ.

The investment fee rate may not be increased over the applicable 1987 investment fee rate for any employer with a positive balance in ~~his~~ the employer's experience rating account on the computation date, as established in rules promulgated by the secretary of labor pursuant to chapter 1-26, for the current year and the year preceding the current year.

The investment rates provided in this section apply to and are retroactive to taxable wages paid on and after January 1, 1993."

Moved by: Johnston  
Second by: Lederman  
Action: Prevailed by voice vote.

MOTION: DO PASS SB 125 AS AMENDED

Moved by: Nygaard  
Second by: Lederman  
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Adelstein, Buhl, Johnston, Lederman, Nygaard, Nelson (Tom)

Excused: Rave

MOTION: PLACE SB 125 ON CONSENT CALENDAR

Moved by: Adelstein  
Second by: Nygaard  
Action: Prevailed by voice vote.

HB 1034: repeal the requirement for motor vehicle liability insurance safety rating discounts for certain older motor vehicle drivers.

Presented by: Merle Scheiber, Division of Insurance  
Proponents: Mike Shaw, Property Casualty Insurance Association of America  
Dennis Duncan, SD Insurance Alliance & Allstate Insurance  
Opponents: Sam Wilson, AARP, Sioux Falls

MOTION: AMEND HB 1034

1034ja

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That § 58-11-58 be amended to read as follows:

58-11-58. Any schedule of rates or rating plan for private passenger motor vehicle bodily injury and property damage liability insurance and collision insurance submitted to, or filed with, the Division of Insurance shall provide for an appropriate reduction in premium charges for persons fifty-five years of age or older who have successfully completed a motor vehicle accident prevention course ~~meeting the criteria approved by the Department of Revenue and Regulation.~~

A motor vehicle accident prevention course shall include at least four hours of online or classroom instruction on the effects of aging on driving behavior; the effects of alcohol, drugs, and medications on older drivers; laws relating to the proper use of a motor vehicle and safe driving behavior; traffic crash avoidance and prevention measures; and driving hazards and risk factors associated with traffic crash prevention.



However, insurers who offer a separate discount which is based upon the age of persons who are fifty-five years of age or older or upon their driving record, are exempt from the provisions of this section and are not required to make an additional filing with the Division of Insurance as a result of the discount required by this section.

Section 2. That § 58-11-59 be amended to read as follows:

58-11-59. Upon successfully completing the ~~approved~~ course, each person shall be issued a certificate by the organization offering the course which shall be used to qualify for the premium discount required by § 58-11-58.

Section 3. That § 58-11-60 be amended to read as follows:

58-11-60. A person shall take and pass the ~~approved~~ course every three years to continue to be eligible for the premium discount required by § 58-11-58.

Section 4. That § 58-11-61 be amended to read as follows:

58-11-61. The premium discount required by § 58-11-58 shall be effective for an insured for a three-year period after successful completion of the ~~approved~~ course. However, the insurer may require, as a condition of providing and maintaining the discount, that the insured:

- (1) Has not been involved in an accident for which the insured is at fault;
- (2) Has not been convicted, pled guilty, or nolo contendere to a moving traffic violation, or to a traffic related alcohol or narcotics offense; and
- (3) Has maintained a driving record free of violations and accidents for which the insured has been found liable for a three-year period prior to course completion.

This section does not apply if the ~~approved~~ course is taken as specified by a court or other governmental entity resulting from a moving traffic violation."

Moved by: Johnston  
Second by: Lederman  
Action: Failed by roll call vote. (3-3-1-0)

Voting Yes: Adelstein, Buhl, Johnston

Voting No: Lederman, Nygaard, Nelson (Tom)

Excused: Rave

MOTION: DO PASS HB 1034

Moved by: Nygaard  
Second by: Lederman  
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION DEFER HB 1034 TO THE 41<sup>ST</sup> LEGISLATIVE DAY

Moved by: Adelstein  
Second by: Buhl  
Action: Failed by roll call vote. (3-3-1-0)

Voting Yes: Adelstein, Buhl, Johnston

Voting No: Lederman, Nygaard, Nelson (Tom)

Excused: Rave

THE MOTION TO DO PASS HB 1034

Moved by: Nygaard  
Second by: Lederman  
Action: FAILED BY ROLL CALL VOTE. (3-3-1-0)

Voting Yes: Lederman, Nygaard, Nelson (Tom)

Voting No: Adelstein, Buhl, Johnston

Excused: Rave

THE CHAIR DEFERRED HB 1034 UNTIL ANOTHER DAY

HB 1035: revise the process for the collection of the annual insurance company examination assessment fee.

Presented by: Merle Scheiber, Division of Insurance

The gavel was turned over to Vice-Chair Nygaard

MOTION: DO PASS HB 1035

Moved by: Adelstein  
Second by: Lederman  
Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Adelstein, Buhl, Johnston, Lederman, Nygaard, Nelson (Tom)

Excused: Rave

The gavel was turned back to chair, Nelson

SB 103: revise certain provisions concerning special alcoholic beverage licenses issued in conjunction with special events.

Presented by: Senator Larry Tidemann  
Proponents: Yvonne Taylor, SD Municipal League  
Tim Dougherty, Licensed Beverage Dealers of SD  
Arnie Brown, self, Brookings

MOTION: AMEND SB 103

103ja

On page 2, line 2, of the printed bill, overstrike ", (6), or (16)" and insert "or (6)".

On page 2, line 17, overstrike "may" and insert "shall".

On page 2, line 18, after "license" insert ", including rules limiting the number of licenses that may be issued to any person within any calendar year".

On page 2, line 20, before "Any" insert "Notwithstanding § 35-1-5.3, a municipality or county may allow the sale of alcoholic beverages on public property or property owned by a nonprofit corporation during a special event.".

Moved by: Nygaard  
Second by: Lederman  
Action: Prevailed by voice vote.

MOTION: DO PASS SB 103 AS AMENDED

Moved by: Adelstein

Second by: Buhl

Action: Prevailed by roll call vote. (6-0-1-0)

Voting Yes: Adelstein, Buhl, Johnston, Lederman, Nygaard, Nelson (Tom)

Excused: Rave

MOTION: PLACE SB 103 ON CONSENT CALENDAR

Moved by: Adelstein

Second by: Lederman

Action: Failed by voice vote.

MOTION: ADJOURN

Moved by: Johnston

Second by: Nygaard

Action: Prevailed by voice vote.

Lois Henry  
Committee Secretary

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Tom Nelson, Chair